

**STATE PETROLEUM BOARD MEETING TO REVIEW CLAIMS
BOARD MEETING MINUTES
DECEMBER 11, 2003**

Note: Copies of this recorded meeting on cassette tape can be obtained from Karen Fleming, NDEP, 333 W. Nye Lane, Room 206, Carson City, Nevada 89706-0851 or by calling (775) 687-9367.

CALL TO ORDER

Mr. John Haycock, Chairman, called the meeting to order at 10:02 a.m. The meeting was videoconferenced at the Legislative Council Bureau Chambers in the State Legislative Building (Room 2134), 401 South Carson Street, Carson City, Nevada and the Legislative Counsel Bureau in the Grant Sawyer Building (Room 4406), 555 Washington St., Las Vegas, Nevada.

BOARD MEMBERS PRESENT

Mr. Allen Biaggi, Ms. Linda Bowman, Mr. Mike Miller, Mr. John Haycock (Chairperson), Ms. Joanne Blystone

STAFF PRESENT

Mr. Gil Cerruti, Mr. Bennett Kottler, Mr. Rob Palmer, Mr. Hayden Bridwell and Ms. Karen Fleming (from the Petroleum Fund), Mr. Quint Aninao (LUST Corrective Action Supervisor), Mr. Jim Najima (Bureau Chief, BCA at NDEP in Carson City), Mr. Bill Frey (Attorney General's Office), and Ms. Susan Gray (Las Vegas Attorney General's Office) and Ms. Sarah Piper, (BCA, Las Vegas Office).

I. APPROVAL OF AGENDA

Mr. John Haycock began the meeting by requesting the Board approve the agenda. Mr. Gil Cerruti announced that all attendees should have a copy of the amended agenda. On the amended agenda, item number 56, case number 99-023, has been removed under the "Old Cases" section.

Joanne Blystone moved to approve the revised agenda. Linda Bowman seconded the motion. Motion carried unanimously.

II. APPROVAL OF THE SEPTEMBER 10, 2003 MINUTES

The following changes were noted: On page 2, change the name Miss Susan Gray to Ms. Susan Gray.

Joanne Blystone moved to approve the minutes as amended. Mike Miller seconded the Motion. Motion carried unanimously.

III. STATUS OF THE FUND STATEMENT

Mr. Gil Cerruti reported that there is a balance forward from last fiscal year of 2003 of \$2.25 million dollars. Approximately \$400,000 in tank fees and \$2.1 million in Petroleum Revenue Fees have been received this year, for total revenue of \$4.7 million. Mr. Cerruti reported that expenditures total \$1.8 million. This includes \$1.6 million for reimbursement for cleanup costs. Other liabilities total \$1.1 million. The total liability amount is \$2.9 million. The balance available today for reimbursement is \$1.8 million. Mr. Cerruti stated that claims in the total amount of \$1.6 million would be presented during this meeting. If all claims are approved, there are enough funds to pay them in full.

IV. DETERMINATION OF FUND COVERAGE

IV.A. Resolution to Grant Petroleum Fund Coverage with a 40% Reduction to Four Way Truck Stop, 1260 6th Street, Wells, Nevada, Petroleum Fund Case ID #2004000011 - Resolution 2003-14

Mr. Cerruti passed out a handout relating to this case. He stated that there was a synopsis of coverage, which had been previously granted for this site in the Executive Summary. He reported that there was some question relating to this due to the 12-month rule. However, good cause was found and coverage was granted. This resolution focuses on the issue of reduction of that coverage, if any.

Mr. Cerruti presented the facts of the case stating that in April 1997, petroleum hydrocarbon contamination was discovered in the soil beneath the dispensers during island and dispenser upgrades. The source was identified as the island piping, dispensers and piping to the dispensers. The release, at that time, was judged to be less than a reportable quantity and no further investigation was done and the tank systems remained in use. In December of 1999, at the request of the owner, leak detection tests were performed by an outside contractor on the underground product lines leading from the above ground tanks to the dispensers. It was determined that the lines failed to hold pressure. The invoices provided to the Board indicate the time and materials required to replace portions of the pipe. The amount of the invoice totals approximately \$20,000, which indicated that quite a bit of work was done. During the tests, it was determined that lines failed to hold pressure and the lines were immediately replaced. However, the old lines were flushed out and remained abandoned in place. Because the old lines were abandoned in place, there was limited exposure to the old lines during installation of the new lines. A confirmation of leakage, and the extent of any leakage relating to the old lines, was not completed. Four Way Truck Stop judged the release to be less than a reportable quantity and did not report the release, with no further investigation. The tank systems were returned to service after the product pipes were replaced.

In October 2002 surface penetration sampling was conducted at the site and results indicated there was significant subsurface contamination. Additional site characterization was performed in July of this year further confirming extensive contamination of the site from both diesel and gasoline. 40 CFR 280.50 requires that owners/operators report to the implementing agency within 24 hours of the discovery of a released regulated substance in an underground storage site. The Board of Review Claims Resolution No. 94-023 requires staff to recommend a 40% reduction in fund reimbursement for violation of this CFR.

Mr. Cerruti stated that neither 40 CFR 280.50 nor Board Resolution 94-023 apply in this case, due to the fact that these regulations apply to underground storage tanks. The case under review had only above ground storage tanks. Mr. Cerruti stated that reporting a release from a storage tank, whether above ground or under ground, is required by NRS 590.870. A copy of this statute had been provided to the Board in Attachment A. It states the operator of every storage tank shall report to the division every discharge from that tank in which he is aware or has reason to believe has occurred. Discharge is defined in NRS 590.730 as any release, leaking or spilling from a storage tank into water or soil. Four Way Truck Stop had reason to believe, as early as 1997 and again in 1999, that a discharge of the systems had occurred by virtue of the suspected leaking pipes. There was contamination and there was a confirmation of that suspicion evidenced by the corrosion of the pipes and soil staining, which they failed

to report. In order to be consistent with Board Resolution 94-023, NDEP staff is recommending a 40% reduction in fund reimbursement for violating NRS 590.870 - the failure to report. Also, the owners of this property have gone into bankruptcy and a new owner purchased the property in October of 2003. The new owner, who has not been a party to the previous events, is here to address the Board on this issue.

Ms. Bowman requested to know if there was a fee involved in 1999. Mr. Cerruti replied that there was no CEM involved and that there was no evidence that there was a CEM involved reporting these events to the owner of the property. The individuals who completed the tank repairs were not certified tank handlers. Mr. Biaggi requested to know if the tanks are above ground storage tanks. Did they fall into the regulatory structure of the Petroleum Fund and are they available for coverage as an AST system rather than a UST system. Mr. Cerruti replied that they are available for coverage as an AST system. This entity paid regularly and there is no record that they missed any payments on enrolling these tanks into the Petroleum Fund.

Mr. Cliff Yeckes, Vice-President of Brown & Caldwell and representative for Mr. Bill Rodriguez, the current owner of the Four Way Truck Stop and Casino, introduced himself and thanked the Board for hearing the appeal to Resolution number 2003-14. Mr. Yeckes stated that he has been an active environmental consultant in Nevada since 1989 and a CEM since the program began. Mr. Rodriguez, the owner, was also in attendance to answer questions. Mr. Yeckes requested that the Board reconsider staff's recommendation of the 40% penalty and reduce the penalty as deemed appropriate based on the information to be presented. Mr. Yeckes gave a brief history of the ownership of the Four Way Truck Stop, stating that the previous owner was Tri Valley Distributing. Tri Valley Distributing was the owner/operator of the Four Way Truck Stop from approximately 1992 until declaring bankruptcy in 2001. The bankruptcy included liquidation of certain assets including the Four Way Truck Stop. Mr. Rodriguez then purchased the Four Way Truck Stop, which is located on the same property as his casino and restaurant. Mr. Yeckes stated that in October 2002, prior to purchasing this site, Mr. Rodriguez retained Brown and Caldwell to perform an environmental due diligence investigation of the site. As a result of that investigation, hydrocarbon contamination was identified in the soil and ground water in the area of the buried product lines between the AST and gasoline fuel island. Mr. Rodriguez immediately reported the findings to the NDEP during the time that Tri Valley Distributing was being managed by the Bankruptcy Court. Recognizing a release had been identified, the Bankruptcy Court then requested another consultant, ATC, who worked with the consultants for Tri Valley. Because of the bankruptcy proceedings, ATC was still associated with Tri Valley. Since ATC was the CEM of record, they needed to actually continue filing the applications on behalf of Tri Valley even though Tri Valley was effectively bankrupt. Recognizing that the release had been identified, the Bankruptcy Court requested ATC to confirm the release, which they did in April of 2003. ATC then filed an application for coverage with the NDEP on August 7, 2003. Brown and Caldwell, in a subsequent investigation necessary to complete the due diligence and develop a corrective action strategy and project costs on behalf of Mr. Rodriguez, installed and sampled permanent ground water wells on the site and confirmed the source of the plume as the buried product lines between the ASTs and the gasoline tanks. Mr. Rodriguez

completed acquisition of the Four Way Truck Stop in late August of 2003. At that time, Mr. Rodriguez assumed all liability for the environmental incidents caused by the previous owners. Two months later, on October 16, NDEP staff notified the Bankruptcy Court, which managed Tri Valley, of their intent to recommend to the Board that fund eligibility be granted with a 40% reduction in reimbursement because of the violation of reporting requirements.

In Resolution 2003-14 staff discusses hydrocarbon contamination discovered in the soils beneath the dispensers during island and dispenser upgrades in April of 1997. Staff then describes the leak detection tests performed on the buried lines located between the ASTs and gasoline dispensing islands by an outside contractor in December 1999, which failed. New lines were immediately installed and old lines flushed out and abandoned in place, staff then concluded that because the old lines were abandoned in place it could not be confirmed if and where they leaked or how extensive those leaks were. No copies of the actual leak detection test reports citing the specific details of those failures are a part of the NDEP files or the Bankruptcy Court files which were provided to Brown and Caldwell for the due diligence investigation.

At the time of the site actions, Tri Valley's contractor, PCS, reported the presence of hydrocarbon staining to Tri Valley. However, according to ATC's application to the State for reimbursement, it was indicated the impacts were field determined and they reported as limited and that the impacts did not pose an environmental risk. Based on these reports, no further actions were taken by Tri Valley. After finding that neither 40 CFR 280.50 nor Board Resolution 94-023 apply in this case, because the release occurred from non-regulated above ground tank systems, staff made the determination that Tri Valley did not report discharges from the underground lines in a timely fashion, based on NRS 280.870, which states the operator of every storage tank shall report to the division every discharge from the tank of which he is aware or has reason to believe has occurred. This was the basis for the 40% penalty.

Based on the information available to the Bankruptcy Court regarding ATC's reimbursement application and staff's discussion, it appeared to Brown & Caldwell that Tri Valley might not have had reason to believe a discharge had occurred because a contractor reported the staining as limited and that it did not pose an environmental liability or an environmental risk. So, they simply didn't file a report. The report of soil staining alone would not necessarily have been significant which is common at facilities that have been around for a long time. Tri Valley had voluntarily enrolled in the fund prior to 1999 and knew they were eligible for fund reimbursement. Mr. Yeckes questioned why Tri Valley would not have reported the incident if they had known it occurred – especially when they were actively involved in addressing a different surface incident right next to the buried lines in the area and had a CEM (Mark Ellis) involved. Mr. Yeckes stated that, in his opinion, it seems likely that they legitimately didn't think it was an issue. In all cases, and for whatever reasons, the underground and aboveground pipes and dispensers and equipment were upgraded by Tri Valley and the sources were eliminated.

Based on ground water information developed by Brown and Caldwell (as a result of the wells that were put in for Bill Rodriguez and his due diligence), the plume growth is probably about 50 to 100 feet over the last five years, based on the gradient of ground water flow and other factors.

Mr. Yeckes stated that it is reasonable to assume that the actual date of discovery should be the Brown and Caldwell evaluation in October 2002 and the penalty should be reduced or eliminated. Since the due diligence efforts in October 2002, Mr. Rodriguez has spent over \$100,000 in site assessment, corrective action planning, tank and equipment upgrades, site rehabilitation and has had exceptional proactive and positive interaction with NDEP. As of today, he has authorized Brown & Caldwell to proceed with pilot testing for full-scale remediation with staff's concurrence. Mr. Rodriguez has also contracted with Flying J to manage the truck stop fuel distribution. Flying J operates a model facility next to his in Wells and has extensive experience with inventory control, reporting, maintenance and standard operating procedures. Mr. Yeckes thanked the Board for hearing the appeal and for reconsidering the 40% penalty. He also thanked the staff for their assistance and support through the appeal process.

Mr. Haycock stated that it appeared that Mr. Rodriguez had been exceptionally cooperative and proactive in this case and then he requested to know if staff concurred with this observation. Mr. Cerruti replied that it had been staff's experience that Mr. Rodriguez, in anticipation of purchasing the property from the Bankruptcy Court and then having purchased the property from the Bankruptcy Court, had acted in a proactive manner to address any and all of the environmental concerns at the site.

Ms. Bowman requested to know if Brown and Caldwell had removed the product lines. Mr. Yeckes stated that the contractor working for Tri Valley Distributing completed this in 1997 and 1999. Ms. Bowman next requested clarification regarding the lines, which were found by Brown & Caldwell. Mr. Yeckes replied that his firm knew that the lines had been abandoned in place and that, through the ground water wells, his firm established, as reasonably as one can establish, that there was a leak that had occurred from that general deficit. Ms. Bowman stated that there needed to be clarification regarding what reasonable expectations would have been at the time in 1999 and what his firm was doing relating to due diligence for the purchase. Ms. Bowman requested to know if Mr. Yeckes felt the contamination was caused by the previously discovered leaks or through new piping. Mr. Yeckes stated that he thought it was created previously, but that it was hard to say. He stated that, in his opinion, it occurred in 1999. Ms. Bowman asked if it was fair to assume that Mr. Yeckes would advise Mr. Rodriguez that it was a leak that had not been reported in a timely fashion. Mr. Yeckes stated that it was not and stated his reasons for this.

Mr. Biaggi disclosed that Mr. Rodriguez and some other individuals from the Wells and Elko area met with him early on in the purchase process and were very proactive and very up-front with the Board. He stated that he felt Mr. Rodriguez had attempted to do the right thing and had been very cooperative with division staff. Mr. Biaggi stated that he agreed with Mr. Yeckes' statement. Mr. Biaggi requested to know what Mr. Yeckes would anticipate the incremental cost to be over and above if this had been reported in a timely fashion. Mr. Yeckes indicated that this would be difficult to ascertain, however, based on the type of movement discussed over five years, it would not be that significant. He stated that the numbers could be somewhat variable. Mr. Yeckes estimated ten to fifteen percent, based on the information received to date.

Mr. Haycock stated that he felt it was absolutely relevant that Mr. Rodriguez had been proactive and cooperative as the new owner. At this point, Mr. Haycock requested a motion from the Board.

Mr. Biaggi stated that while he had no desire to penalize a new owner for the activities of a previous owner, he did not feel that the State of Nevada and the Petroleum Board should be paying for the inappropriate actions of a past owner and recommended that the difference in cost be split and propose a twenty percent (20%) reduction in lieu of the staff recommended forty percent (40%).

Allen Biaggi moved to propose a twenty percent (20%) reduction to Four Way Truck Stop in lieu of the staff recommended 40%. Linda Bowman seconded the Motion. Motion carried unanimously.

IV.B. Resolution to Adopt a Policy Delegating Authority to the State Petroleum Fund Administrator to Update Previously Approved Resolutions - Resolution 2003-16.

Mr. Cerruti stated that the purpose of this resolution is to obtain authority to change those items in previously approved resolutions and their attachments that have been outdated by bureaucratic changes. He cited examples such as updating an address, a phone number or contact individual.

Linda Bowman moved to approve the Resolution. Joanne Blystone seconded the Motion.

Discussion followed.

Mr. Kirk Stowers of Broadbent and Associates agreed with the purpose of this resolution and requested to know if there was a written copy of the resolution, which limited the scope to the administrative items being discussed. Mr. Cerruti directed Mr. Stowers to Item I of the written resolution, which specifically refers to addresses, phone numbers or other types of references.

Motion passed unanimously.

IV.C. Resolution to Grant Petroleum Fund Coverage with a 10% reduction to Circle K #1248, 1550 North Lamb Blvd., Las Vegas, Facility ID #8-000125; Petroleum Case ID #1999000275 – Resolution 2003-15

Mr. Bennett Kottler, Petroleum Fund staff member, was in attendance to review this resolution. He stated that the gasoline contamination was discovered on October 22, 2002, during upgrades of the cathodic protection systems of the three underground storage tanks located at the facility. On November 18 and 19, 2002, ground water samples were found with Benzene and MTBE concentrations above state action levels. Subsequent investigations found that despite all UST systems at the site passing tank and line tests, a leak was discovered in a ball valve, a valve located in the turbine pump assembly of UST No. 3. This component was repaired on May 10, 2003 and the UST system in question passed the precision tightness test conducted on June 19 of the same year. In communication with the NDEP in an October 14, 2003 letter, the owner of the UST in question clarified that 10% of the subsurface contamination was estimated to have originated from overfill/spill.

Board Resolution 99-022 states that where a claimant is able to identify the relative percentage of the total site contamination from a non-reimbursable event, such as overfill or spill, staff will recommend a respective reduction in fund coverage commensurate with the percentage of the release that is due to overfill or spill. NDEP has recommended that the subject facility receive fund coverage with a 10% reduction.

Mr. Haycock requested to know if a representative for Circle K was present. Mr. Rex Heppe, ATC Associates, was in attendance to represent Circle K. Mr. Haycock requested to know if Mr. Heppe concurred with the staff proposal. Mr. Heppe stated that Conoco Phillips is the present owner of the station and concurred with the resolution.

Linda Bowman moved to approve the Resolution. Mike Miller seconded the Motion. Motion passed unanimously.

IV.D. Resolution to Dismiss the Application for Coverage Submitted by Patrick Taylor (Carried forward from the June 11, 2003 Petroleum Board meeting) – Resolution 2003-02

Ms. Bowman announced that she must excuse herself from review of this project due to a conflict of interest.

Mr. Cerruti reported that this resolution referred to a case from 1998, which had been discussed at previous meetings. Mr. Cerruti stated that this is a resolution to dismiss the application for Petroleum Fund coverage submitted by Mr. Patrick Taylor. This resolution was first heard by this Board at the June 2003 meeting. At that time, it was pointed out to the Board that Mr. Taylor was not a tank owner, operator or vendor, and that he purchased property from Mr. Robert Hager knowing that it was contaminated and it was not covered by the Petroleum Fund. In fact, Mr. Taylor and his wife, voluntarily entered into an agreement with NDEP wherein they stipulated and agreed to "be responsible for any future response activities and assume responsibility for the perspective environmental clean up obligations". Further, Mr. Taylor, in that agreement, acknowledged that at the time of his purchase of the property there was an existing cleanup contract between a consultant and NDEP and he acknowledged in this agreement his obligation to pay for the cleanup activities by agreeing to reimburse NDEP for the contracted costs until such time as he could affect his own cleanup contract. Mr. Cerruti stated that the three stipulations and agreements are found in Attachment B on Page 3, paragraphs 5.1 and 5.3. On Page 7 of that same agreement, both Mr. Taylor and his wife signed the agreement on March 7, 2001. In June of 2003, Mr. Taylor and his consultant came before the Board and requested Petroleum Fund coverage for this site. At the June 11, 2003 meeting, the Board asked for an opinion from Mr. Bill Frey of the Attorney General's Office prior to rendering a decision. Since Mr. Frey was not present at that meeting, the Board postponed making a decision until such an opinion could be presented.

Mr. Bill Frey, Deputy Attorney General, introduced himself and clarified that he represented the Division of Environmental Protection. He stated that Mr. Taylor, as a successor purchaser to Mr. Hager's rights, was agreeing to pay for any future cleanup at the site. However, Mr. Frey stated that he had been requested to look at the issue of what the successor purchaser is entitled to if, in fact, there was no agreement. Mr. Frey reported that he looked at some of the files and spoke to Mr. Najima regarding this matter. In the past, any successor purchaser to a property that was the subject of reimbursement from the Petroleum Fund only received what the previous owner was getting as far as a percentage of reimbursement. In other words, if the original owner was subject to a penalty for a reduction for example of forty percent (40%), the successor purchaser was subject to that forty percent (40%) reduction.

Mr. Frey handed out an affidavit of Robert Hager and stated that Ms. Gray would distribute this affidavit in Las Vegas. He stated that the affidavit attached to a Motion that Mr. Hager filed in U.S. District Court and as an attachment to a Motion in District Court it was open to the public. On page two of this affidavit, Mr. Hager estimates that he had spent approximately \$425,000 in cleanup costs and eventually Mr. Hager received a reimbursement from the Board of \$80,000. The \$80,000 represents approximately 17.8% of the \$425,000. If Mr. Hager received 17.8%, a future purchaser of the property, at the most, would only be entitled to what Mr. Hager received. Mr. Frey stated that he did not find anything wrong with that agreement, but would leave the decision up to the Board.

Ms. Kathy Brandmueller, CEM, was in attendance to represent Mr. Taylor. She stated that the money was claimed by Mr. Hager, but it was never put through any Petroleum Fund scrutiny. She stated that she was uncertain if the entire amount was totally eligible. Ms. Brandmueller stated that it has been reported that some expenses may relate to unnecessary cleanup expenses. If they were unnecessary expenses the Board probably would not cover them. Ms. Brandmueller stated that she does not really believe that there were unnecessary cleanup expenses, but it could be possible that Mr. Taylor included other losses in the amount, such as not being able to sell fuel during that time of the cleanup, upgrading tanks, taking the tanks out of the ground and all of those things would not be covered by the Petroleum Fund. Ms. Brandmueller stated that without some sort of a review of this claim, it is difficult to ascertain the exact percentage. She stated that other arguments for this claim had been made at prior Board meetings.

Allen Biaggi moved that coverage be granted to Patrick Taylor in the amount equal the amount of coverage granted to Robert Hager. A short discussion regarding the percentage amount followed. Mr. Biaggi stated that his motion was worded to allow for a review of the claim to confirm the previously mentioned percentage of 17.8%. Mr. Miller requested to know if a second had been obtained. Mr. Haycock replied that he did not think that a second was required, but that he would obtain one. At this point, the Board members were polled for their decision. Board members Miller, Biaggi, and Blystone voted yes. Motion carried.

IV.E. Resolution to Grant Petroleum Fund Coverage with a 40% Reduction to 7-Eleven #22070, 7921 South Las Vegas Blvd., Las Vegas, Facility ID #8-000578, Petroleum Fund Case ID #1999000244 – Resolution 2003-23

Mr. Bennett Kottler, Petroleum Fund, was in attendance to present this resolution. Before beginning the presentation, Mr. Kottler noted that there is a typographical error on the second page of the resolution. Item No. 12, under UST 003, the word “not” should be inserted after the word “did” to read, “The tests conducted on the repaired UST did **not** meet Federal standards”.

Mr. Kottler stated that the subject Resolution 2003-23 is in regard to gasoline contamination that was discovered, when according to the application for coverage, statistical inventory reconciliation records for the premium unleaded underground storage tank failed successive monthly records from September 1999 to January 2000. No investigation of the suspected release was conducted during this time. In addition, the UST in question remained in operation for five months without investigating, confirming, or ultimately stopping the suspected release.

On March 21, 2000 the UST in question failed both SIR and precision tightness tests. During subsequent investigation on March 31 of the same year a 12-inch break was discovered of the shell wall of the UST. At this time a spill report was filed with NDEP for the first time. The UST was returned to service after repairs to the tank were deemed to be successful based on air/soap tests. These tests were not federally approved. Nonetheless, subsequent monthly checks of the UST system confirm that the system is free of leaks. The application for coverage under the fund was received on July 15, 2002, more than 12 months after knowledge of the failed SIR tests; however, the owner showed good cause for the delay because of delays in obtaining information from contractors, and efforts regarding the site were focused on confirming, locating, and repairing the release source. In accordance with Board Resolution 96-003, the Petroleum Fund Administrator has waived the 12-month deadline to file an initial claim cited in NAC 590.780. Resolution 94-023 allows NDEP to recommend a reimbursement reduction to the largest percentage associated with any single violation and NDEP, therefore, recommend that the subject facility receive fund coverage with a 40% reduction.

Mr. Haycock requested to know if there was a representative for 7-Eleven. No representative was in attendance.

Linda Bowman moved to approve the Resolution. Joanne Blystone seconded the Motion. A roll call vote was requested by Chairperson Haycock. Board members Miller, Bowman, Biaggi, and Blystone voted yes. Motion carried.

IV.F. Resolution to Grant Petroleum Fund Coverage with a 40% Reduction to Pilot Travel Center #387, 791 10th Street, Carlin, NV, Facility ID #6-000245, Petroleum Fund Case ID #1999000211 – Resolution 2003-24

Mr. Kottler also presented Resolution 2003-24. He stated that the subject of this resolution is a system in which three single wall fiberglass 12,000-gallon diesel USTs are manifolded together. When adding or removing product to one or more USTs, a siphoning effect maintains equal fuel level among the tanks, effectively, these three USTs function as a single system. Evidence of the subject diesel contamination was first discovered on February 29, 2000 when water was found in the USTs. Additional evidence indicating that the UST system was leaking included product losses found in SIR records from November 26, 2000 to January 31, 2001, failing results of a tracer test received on May 24, 2001, and failure of a tightness test on June 5, 2001. None of the aforementioned potential releases were reported to the NDEP within 24 hours as required by 40 CFR 280.50. Excavation to the top of the tanks subsequently found loose fittings and a vent line at the top of one UST and at two of the pipes manifolding the tanks together. All faulty piping was replaced and all three UST systems passed a system precision tightness test performed on June 20, 2001. Resolution 94-023 allows NDEP to recommend the reimbursement reduction for the largest percentage associated with any single violation and NDEP therefore recommends the subject facility receive Petroleum Fund coverage with a 40% reduction.

Mr. Haycock requested to know if there was a representative for Pilot Travel Center. No representative was in attendance.

Allen Biaggi moved to approve Resolution No. 2003-24. Linda Bowman seconded the Motion. A roll call vote was taken. Board members Miller, Bowman, Biaggi and Blystone voted yes. Motion carried.

V. EQUIPMENT OWNER TRANSFER

Mr Haycock apologized and stated that he had to leave the meeting and stated that he was turning the remainder of the meeting over to Vice-Chairperson, Linda Bowman.

Ms. Bowman asked Mr. Cerruti if Agenda Items A-F could be reviewed together. Mr. Cerruti confirmed that they could be. Ms. Bowman requested a motion for items A-F, which were:

- A. Transfer of Remediation Equipment from Berry-Hinckley, Industries, Store #45 (Case ID No. 1999000117) to the Berry Hinckley, Industries, Store #14 (Case ID No. 1999000252) – Resolution 2003-17.**
- B. Equipment Transfer from Berry-Hinckley, Industries, Store #45, at 1400 Rand Ave., Carson City, NV (Case ID No. 1999000117) to Berry-Hinckley, Industries, Store #14, 2191 Pyramid Highway, Sparks, NV (Case ID No. 1999000252) – Resolution 2003-18.**

- C. **Transfer of Remediation Equipment from the BP West Coast Products Arco Facility #5310, 2728 South Las Vegas Blvd., Las Vegas, NV (Case ID No. 1993000107) to Echo Bay Resort, Lake Mead National Recreation Area, State Highway 167 (Case ID No. 1998000080) – Resolution 2003-19.**
- D. **Transfer of Remediation Equipment from the former Hansen Electric, 1220 Greg Street, Sparks, NV (Case ID No. 1993000114) to Berry-Hinckley, Industries, 250 North McCarran Blvd., Sparks, NV (Case ID No. 1999000182) – Resolution 2003-20.**
- E. **Transfer of Remediation Equipment from the former Hansen Electric, 1220 Greg Street, Sparks, NV (Case ID No. 1993000114) to Berry-Hinckley, Industries, 250 North McCarran Blvd., Sparks, NV (Case ID No. 1999000182) – Resolution 2003-21.**
- F. **Sale of Remediation Equipment from the Wells Cargo facility, at the Nevada Freight Terminal (Case ID No. 1992000099) to Miners Contracting, Luning, NV – Resolution 2003-22.**

Joanne Blystone moved to approved Item V- A through F. Mike Miller seconded. There was no discussion. **Motion carried unanimously.**

VI. REVIEW OF CLEANUP CLAIMS

Ms. Bowman requested to know if these were primarily consent items. Mr. Cerruti confirmed that they were all consent items. Ms. Blystone suggested that these be reviewed together. These items included: all Heating Oil - Items 1 through 3; Above Ground Storage Tanks - Items 1 through 3; New Cases/Other Products - Items 1 through 6; Old Cases/Other Products, Items 1 through 83.

Joanne Blystone moved for approval of all clean-up claims in all categories. Ms. Bowman stated that the Nevada Ready Mix case, Item #56, should be removed. It was clarified that a revised agenda had been completed and that Nevada Ready Mix was no longer listed. **Mike Miller seconded the Motion.** Discussion followed.

Ms. Bowman stated that, for purposes of the record, she would abstain from Item 4 - Old Cases, Other Products, for Allied Washoe, as they were her clients and would also abstain from Item 20, Avis Rent-A-Car as she has represented this entity. **Motion carried unanimously.**

VII. EXECUTIVE SUMMARY REPORT

Mr. Cerruti stated that fiscal year 2004 began on July 1, 2004, and that to-date, NDEP has received eighteen new cases for evaluation from the Petroleum Fund coverage. Since inception of the program, there have been 1,184 cases evaluated for reimbursement. Three hundred twenty-one of those cases are still active and expected to continue seeking reimbursement. A total of 711 cases have been closed; 94 cases have been denied coverage, and 41 cases have expired. A total of 17 cases are currently in a pending status, either awaiting submittal of additional information or staff evaluation.

To date, over 101.8 million dollars has been reimbursed from the Petroleum Fund and this Board has just approved another 1.6 million. As mentioned earlier, Four Way Truck Stop was granted coverage based on requirements of showing good-cause for not having fulfilled the 12-month rule and earlier in this meeting the resolution this Board adopted gave them a 20% reduction.

Ms. Bowman thanked Mr. Cerutti and requested that the next Executive Summary Report include the number of tanks currently enrolled in the Petroleum Fund. Mr. Cerruti replied that he will include this fact in the next report and also provide the information verbally to the Board. He reported that total facilities invoiced starting October 1, 2003 was 1,395. To date, 1,340 have paid for a 96% return rate. There are 33 facilities needing leak detection to meet that requirement before they enroll in the fund. There are a total of 615 above ground and 196 AST facilities. The total number of regulated facilities is 1,254. This information is current as of December 3, 2003.

VIII. PUBLIC FORUM

Mr. Kirk Stowers, Broadbent Associates, requested to know if there was a way for the public to review the text of the resolutions prior to these meetings for the public and if there was a way to obtain a copy of the Board minutes. Mr. Cerruti replied that the minutes are posted on the website and may be downloaded as a pdf file. He stated that to obtain a copy of the resolutions, prior to the meeting may be obtained by requesting a copy. Mr. Cerruti stated that Mr. Stowers would be added to the regular distribution list.

IX. CONFIRMATION OF NEXT BOARD MEETING

The next Board meeting will be held on March 11, 2004. Mr. Cerruti stated that meetings are reviewed for complexity prior to setting up the meeting format. If the meeting is complex, meeting together is considered; otherwise, the videoconference format will be used. Mr. Cerruti stated that a schedule of meetings is available in the Board package under Item IX.

X. ADJOURNMENT

There being no further discussions, the meeting adjourned at 11:06 a.m.